

Philip S. Griffin
Attorney at Law
The Griffin Law Group
One World Trade Center
121 SW Salmon St., Suite 1100
Portland, Oregon USA 97221
Tel. 503.471.1306
Fax. 503.244.3264
Email: phil@griffinlawgroup.com

Of Attorneys for Defendant Zuru, LLC

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

ZING TOYS, INC., an Oregon corporation,

Plaintiff,

vs.

ZURU, LLC, an Oregon limited liability company, aka and/or dba ZURU INC., ZURU.COM, ZURU-INC, ZURU LIMITED, GURU GLOBAL LIMITED, GURU TOYS, GURU TOYS, LTD., ZURU TOYS, ; ANNA JANE MOWBRAY, an individual; MATTHEW PETER MOWBRAY, an individual; and NICHOLAS JAMES MOWBRAY, an individual; and JOHN DOES 1- 10,

Defendants.

Case No. CV10-863-HA

**DEFENDANT, ZURU, LLC'S ANSWER
AND AFFIRMATIVE DEFENSES**

Introduction

Comes now Defendant Zuru, LLC and answers Plaintiff's *Complaint* by affirming, denying and affirmatively defending as follows:

1.

Zuru, LLC admits the allegations of this paragraph.

2.

Zuru, LLC admits that this court has subject matter jurisdiction. Zuru, LLC denies the remaining allegations in this paragraph.

3.

Zuru, LLC admits the allegations of this paragraph.

4.

Zuru, LLC admits that this Court has personal jurisdiction over it. Zuru, LLC denies the remaining allegations in this paragraph.

5.

Zuru, LLC admits the allegations of this paragraph.

6.

Zuru, LLC admits the allegations of this paragraph.

7.

Zuru, LLC lacks knowledge and information sufficient to form a belief about the truth of this allegation and so denies the same.

8.

Zuru, LLC admits that it is a limited liability company registered under the laws of the State of Oregon. Zuru, LLC denies the remaining allegations in this paragraph.

9.

Zuru, LLC admits the allegations of this paragraph.

10.

Zuru, LLC lacks knowledge and information sufficient to form a belief about the truth of this allegation and so denies the same.

11.

Zuru, LLC lacks knowledge and information sufficient to form a belief about the truth of this allegation and so denies the same.

12.

Zuru, LLC lacks knowledge and information sufficient to form a belief about the truth of this allegation and so denies the same.

13.

Zuru, LLC lacks knowledge and information sufficient to form a belief about the truth of this allegation and so denies the same.

14.

Zuru, LLC lacks knowledge and information sufficient to form a belief about the truth of this allegation and so denies the same.

15.

Zuru, LLC lacks knowledge and information sufficient to form a belief about the truth of this allegation and so denies the same.

16.

Zuru, LLC lacks knowledge and information sufficient to form a belief about the truth of this allegation and so denies the same.

17.

Zuru, LLC lacks knowledge and information sufficient to form a belief about the truth of this allegation and so denies the same.

18.

Zuru, LLC denies it was ever a party to a manufacturing and/or distribution agreement with

Zing Toys, Inc. ("Zing") and otherwise denies the remaining allegations of this paragraph.

19.

Zuru, LLC lacks knowledge and information sufficient to form a belief about the truth of this allegation and so denies the same.

20.

Zuru, LLC admits that Zing claims an exclusive copyright for the original artwork of the stylized logos "ZING" and "ZING AIR" but otherwise denies the remaining allegations of this paragraph.

21.

Zuru, LLC denies the allegations in this paragraph.

22.

Zuru, LLC denies the allegations in this paragraph.

23.

Zuru, LLC denies the allegations in this paragraph.

24.

Zuru, LLC denies that it was ever a party to any pricing agreement or a Zing/Zuru Limited Distribution Products agreement, and accordingly denies the remaining allegations of this paragraph.

25.

Zuru, LLC denies that it was ever a party to any pricing agreement or a Zing/Zuru Limited Distribution Products agreement, and accordingly denies the remaining allegations of this paragraph.

26.

Zuru, LLC denies that it was ever a party to any pricing agreement or a Zing/Zuru Limited

Distribution Products agreement, and accordingly denies the remaining allegations of this paragraph.

27.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing, including, but not limited to, imposition of a 7% "deduction" and accordingly denies the remaining allegations of this paragraph.

28.

Zuru, LLC denies the allegations of this paragraph.

29.

Zuru, LLC denies that the Zyclone is solely a Zing licensed product. Zuru, LLC admits that the Zyclone has some patent protection in Europe, the United States, Canada and other markets. Zuru, LLC denies that it was ever a party to any pricing agreement or a Zing/Zuru Limited Distribution Products agreement, and accordingly denies the remaining allegations of this paragraph.

30.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph, except admits, based upon information and belief that Zing, at some point, did begin manufacturing the Zyclone product independently.

31.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph.

32.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph.

33.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph.

34.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and Zuru, LLC further lacks knowledge and information sufficient to form a belief about the truth of this allegation and so denies the same.

35.

Zuru, LLC lacks knowledge and information sufficient to form a belief about the truth of this allegation and so denies the same.

36.

Zuru, LLC denies that it was ever a party to any pricing agreement or a Zing/Zuru Limited Distribution Products agreement, and accordingly denies the remaining allegations of this paragraph.

37.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph.

38.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph.

39.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph.

40.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies any involvement with the "Wazooka" product

41.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies any involvement with the "Wazooka" product

42.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies any involvement with the "Wazooka" product.

43.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies any involvement with the "Wazooka" product

44.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies any involvement with the "Wazooka" product.

45.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies any involvement with the "Helirang" and "Zartz" product.

46.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies any involvement with the "Wazooka" product.

47.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies any involvement with the "Roomboom," "Zoomarang," "Wazooka," "Copterang", Helirang," "Popshotz Blaster" and "Zartz" products.

48.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies any involvement with the "Wazooka" product.

49.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies any involvement with the "Helirang" product.

50.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies any

involvement with the "Helirang" and "Zartz" products.

51.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies any involvement with the "Wazooka", "Helirang" and "Zartz" products. Zuru, LLC further denies it has ever utilized the "ZING AIR" logo.

52.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies any involvement with the "Wazooka", "Helirang" and "Zartz" products. Zuru, LLC further denies it has ever utilized the "ZING AIR" logo.

53.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies any involvement with the "Wazooka", "Helirang" and "Zartz" product. Zuru, LLC further denies it has ever utilized the "ZING AIR" logo.

54.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies any involvement with the "Wazooka", "Helirang" and "Zartz" product. Zuru, LLC further denies it has ever utilized the "ZING AIR" logo. Zuru, LLC further denies any involvement or use of "Zing's Molds."

55.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies any involvement with the "Wazooka", "Helirang" and "Zartz" product. Zuru, LLC further denies it has ever utilized the "ZING AIR" logo. Zuru, LLC further denies any involvement or use of "Zing's Molds."

56.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies any involvement with the "Wazooka", "Helirang" and "Zartz" product. Zuru, LLC further denies it has ever utilized the "ZING AIR" logo. Zuru, LLC further denies any involvement with or use of "Zing's Molds" or "Zing stylized packaging."

57.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies any involvement with the "Wazooka", "Helirang" and "Zartz" product. Zuru, LLC further denies it has ever utilized the "ZING AIR" logo. Zuru, LLC further denies any involvement or use of "Zing's Molds." Zuru, LLC further denies that it owes any "royalties or sale profits due Zing."

58.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies: 1) any involvement with Zing's products; 2) any involvement with any of Zing's print media or advertising; 3) any involvement with any of Zing's copyrighted material; 4) it owes any monies to Zing, and 5) any involvement in the manufacture of any Zing products.

59.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the allegations of this paragraph.

COUNT I

(Federal Trademark and Patent Infringement - 15 U.S.C. §1114 and 35 U.S.C. § 271)

60.

Zuru, LLC realleges and incorporates Paragraphs 1 through 59 above, as though fully set out below.

61.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies: 1) any involvement with Zing's products; 2) any involvement with any of Zing's print media or advertising; 3) any involvement with any of Zing's copyrighted material; 4) that it owes any monies to Zing, and 5) any involvement in the manufacture of any Zing products.

62.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing. Zuru, LLC lacks knowledge and information sufficient to form a belief about the truth of the remainder of this allegation and so denies the same.

63.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing. Zuru, LLC lacks knowledge and information sufficient to form a belief about the truth of the remainder of this allegation and so denies the same.

COUNT II

(Federal Trademark Counterfeiting - 15 U.S.C. §1116)

64.

Zuru, LLC realleges and incorporates Paragraphs 1 through 63 above, as though fully set out below.

65.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing. Zuru, LLC further denies that it ever received "repeated and express" notice from Zing in regard to its alleged trademark rights.

66.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies: 1) any involvement with Zing's products; 2) any involvement with any of Zing's print media or advertising; and 3) any involvement with any of Zing's copyrighted material.

67.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies: 1) any involvement with Zing's products; 2) any involvement with any of Zing's print media or advertising; 3) any involvement with any of Zing's copyrighted material; and 4) any involvement in the manufacture of any Zing products, counterfeit or otherwise. Zuru, LLC further denies that it has caused any damage to Zing.

68.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies: 1) any

involvement with Zing's products; 2) any involvement with any of Zing's print media or advertising; 3) any involvement with any of Zing's copyrighted material; and 4) any involvement in the manufacture of any Zing products, counterfeit or otherwise. Zuru, LLC further denies that it has caused any damage to Zing.

69.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies: 1) any involvement with Zing's products; 2) any involvement with any of Zing's print media or advertising; 3) any involvement with any of Zing's copyrighted material; and 4) any involvement in the manufacture of any Zing products, counterfeit or otherwise. Zuru, LLC further denies that it has caused any damage to Zing.

COUNT III

(Federal Trademark Dilution/Cyberpiracy- 15 U.S.C. §1125)

70.

Zuru, LLC realleges and incorporates Paragraphs 1 through 69 above, as though fully set out below.

71.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies it has ever utilized the "ZING AIR" or "Zing" symbol.

72.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies it has

ever utilized the "ZING AIR" or "Zing" symbol. Zuru, LLC further denies that it has diluted the trademark "Zing."

73.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies it has ever utilized the "ZING AIR" or "Zing" symbol. Zuru, LLC further denies that it has diluted the trademark "Zing."

74.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies it has ever utilized the "ZING AIR" or "Zing" symbol. Zuru, LLC further denies that it has diluted the trademark "Zing." Zuru, LLC further denies it has caused Zing damage or injury.

75.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies it has ever utilized the "ZING AIR" or "Zing" symbol. Zuru, LLC further denies that it has diluted the Zing trademarks. Zuru, LLC further denies it has caused damage or injury to Zing.

76.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies it has ever utilized the "ZING AIR" or "Zing" symbol. Zuru, LLC further denies that it has diluted the Zing trademarks. Zuru, LLC further denies it has caused damage or injury to Zing.

77.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies it has ever utilized the "ZING AIR" or "Zing" symbol. Zuru, LLC further denies that it has diluted the Zing trademarks. Zuru, LLC further denies it has caused damage or injury to Zing.

COUNT IV

(Action for Dilution under Oregon's Antidilution Statute - ORS 647.107)

78.

Zuru, LLC realleges and incorporates Paragraphs 1 through 77 above, as though fully set out below.

79.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies it has ever utilized the "ZING AIR" or "Zing" symbol. Zuru, LLC further denies that it has diluted the Zing trademarks. Zuru, LLC further denies it has caused damage or injury to Zing.

80.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies it has ever utilized the "ZING AIR" or "Zing" symbol. Zuru, LLC further denies that it has diluted the Zing trademarks. Zuru, LLC further denies it has caused damage or injury to Zing.

81.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies it has ever utilized the "ZING AIR" or "Zing" symbol. Zuru, LLC further denies that it has diluted the

Zing trademarks. Zuru, LLC further denies it has caused damage or injury to Zing.

COUNT V

(Unlawful Importation - 15 U.S.C. § 1124)

82.

Zuru, LLC realleges and incorporates Paragraphs 1 through 81 above, as though fully set out below.

83.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies it has ever, or plans to "import and/or misappropriate toy products that copy and simulate Zing Toy Products that include the "Zing" registered trademark.

84.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies it has ever imported merchandise that copies or simulates Zing's registered trademark. Zuru, LLC further denies it has caused damage or injury to Zing.

85.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies it has ever imported merchandise that copies or simulates Zing's registered trademark.

86.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies it has

ever imported merchandise that copies or simulates Zing's registered trademark. Zuru, LLC further denies it has caused damage or injury to Zing.

87.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies it has ever imported merchandise that copies or simulates Zing's registered trademark. Zuru, LLC further denies it has caused damage or injury to Zing.

COUNT VI

(Common Law Trade Mark Infringement)

88.

Zuru, LLC realleges and incorporates Paragraphs 1 through 87 above, as though fully set out below.

89.

Zuru, LLC lacks knowledge and information sufficient to form a belief about the truth of this allegation and so denies the same.

90.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies it has ever utilized the "ZING AIR" or "Zing" symbol. Zuru, LLC further denies that it has diluted the Zing trademarks. Zuru, LLC further denies it has caused damage or injury to Zing.

91.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies it has

ever utilized the "ZING AIR" or "Zing" symbol. Zuru, LLC further denies that it has diluted the Zing trademarks. Zuru, LLC further denies it has caused damage or injury to Zing.

92.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies it has ever utilized the "ZING AIR" or "Zing" symbol. Zuru, LLC further denies that it has diluted the Zing trademarks. Zuru, LLC further denies it has caused damage or injury to Zing.

93.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies it has ever utilized the "ZING AIR" or "Zing" symbol. Zuru, LLC further denies that it has diluted the Zing trademarks. Zuru, LLC further denies it has caused damage or injury to Zing.

COUNT VII

(Federal Unfair Competition & False Designation of Origin - 15 U.S.C. 1125 (a))

94.

Zuru, LLC realleges and incorporates Paragraphs 1 through 93 above, as though fully set out below.

95.

This allegation constitutes a legal conclusion and is not susceptible to a responsive pleading, and accordingly Zuru, LLC denies the same.

96.

Zuru, LLC based upon information and belief, admits the same.

97.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies it has ever utilized the "ZING AIR" or "Zing" symbol. Zuru, LLC further denies that it has caused any confusion among consumers as to Zing's products. Zuru, LLC further denies it has caused damage or injury to Zing.

98.

Zuru, LLC lacks knowledge and information sufficient to form a belief about the truth of this allegation and so denies the same.

99.

Zuru, LLC lacks knowledge and information sufficient to form a belief about the truth of this allegation and so denies the same.

100.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies: 1) any involvement with Zing's products, including the "Wazooka"; 2) any involvement with any of Zing's print media or advertising; 3) any involvement with any of Zing's copyrighted material; and 4) any involvement in the manufacture of any Zing products, counterfeit or otherwise. Zuru, LLC further denies that it has caused any damage to Zing.

101.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies: 1) any involvement with Zing's products; 2) any involvement with any of Zing's print media or advertising; 3) any involvement with any of Zing's copyrighted material; and 4) any involvement

in the manufacture of any Zing products, counterfeit or otherwise. Zuru, LLC further denies that it has caused any damage to Zing.

102.

Zuru, LLC denies it is a direct competitor with Zing. Zuru, LLC further denies the remaining allegations in this paragraph.

103.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies: 1) any involvement with Zing's products; 2) any involvement with any of Zing's print media or advertising, and; 3) any involvement with any of Zing's copyrighted material, including "specialized unique packaging."

104.

Zuru, LLC denies it has used "Zing's specialized unique packaging, trade dress and/or branding" and accordingly denies the remaining allegations in this paragraph.

105.

Zuru, LLC denies it has used "Zing's specialized unique packaging, trade dress and/or branding" and accordingly denies the remaining allegations in this paragraph.

106.

Zuru, LLC denies that it was ever a party to any business agreement or transaction with Zing and accordingly denies the remaining allegations of this paragraph. Zuru, LLC further denies: 1) any involvement with Zing's products; 2) any involvement with any of Zing's print media or advertising, and; 3) any involvement with any of Zing's copyrighted material, including "original artwork, trade marks and branding on toy products." Zuru, LLC does not, and never has had a

website.

107.

Zuru, LLC denies: 1) any involvement with Zing's products; 2) any involvement with any of Zing's print media or advertising, and; 3) any involvement with any of Zing's copyrighted material, including "product designs, packaging, trade dress and branding."

Zuru, LLC denies it has caused injury or damage to Zing.

108.

Zuru, LLC denies: 1) any involvement with Zing's products; 2) any involvement with any of Zing's print media or advertising, and; 3) any involvement with any of Zing's copyrighted material, including "specialized branding, trade dress and packaging."

Zuru, LLC denies it has caused injury or damage to Zing.

109.

Zuru, LLC denies: 1) any involvement with Zing's products; 2) any involvement with any of Zing's print media or advertising, and; 3) any involvement with any of Zing's copyrighted material, including the "ZING AIR" logo. Zuru, LLC denies that it has caused injury or damage to Zing.

110.

Zuru, LLC denies that it has engaged in any acts of unfair competition. Zuru, LLC further denies that it has caused injury or damage to Zing.

COUNT VIII

(Unfair Competition - State Law Claim)

111.

Zuru, LLC realleges and incorporates Paragraphs 1 through 110 above, as though fully set out

below.

112.

Zuru, LLC denies the allegations in this paragraph.

113.

Zuru, LLC denies: 1) that it ever engaged in competition, unfair or otherwise, with Zing; 2) that it ever used Zing's original artwork and toy packaging; or 3) that it ever confused the public regarding the origin, design and sale of Zing toy products.

114.

Zuru, LLC denies that it has caused damage or injury to Zing.

115.

Zuru, LLC denies that its conduct, as alleged herein, entitles Zing to injunctive relief.

COUNT IX

(Misuse of Trade Dress - ORS 646 et. seq. and ORS 647.107)

116.

Zuru, LLC realleges and incorporates Paragraphs 1 through 115, as fully set forth herein.

117.

Zuru, LLC lacks knowledge and information sufficient to form a belief about the truth of this allegation and so denies the same.

118.

Zuru, LLC lacks knowledge and information sufficient to form a belief about the truth of this allegation regarding Zing's trade dress or its origin or its intent for use and so denies the same.

Zuru, LLC denies that it ever engaged in the unauthorized use of Zing's trade dress.

119.

This allegation constitutes a legal conclusion and is not susceptible to a response. Zuru, LLC accordingly denies the allegation in this paragraph.

120.

Zuru, LLC denies that it has caused confusion in the marketplace as a result of the conduct alleged in this paragraph. Zuru, LLC further denies it engaged in "bad faith, unconscionable sales tactics" as alleged in this paragraph. Zuru, LLC further denies that it has caused any damage or injury to Zing.

121.

Zuru, LLC denies that it misused Zing's trade dress or utilized unlawful trade practices. Zuru, LLC denies it ever marketed, deceitfully or otherwise, any product. Zuru, LLC denies that it caused any injury or damage to Zing.

COUNT X

(Unjust Enrichment)

122.

Zuru, LLC realleges and incorporates Paragraphs 1 through 121 above, as though fully set forth herein.

123.

Zuru, LLC denies that it ever engaged in "manufacturing, distributing, marketing, and/or selling" Zing toy products. Zuru, LLC further denies that it ever "usurped business opportunities that personally belong to Zing."

124.

Zuru, LLC denies: 1) any involvement with Zing's toy products; 2) any involvement with any of Zing's print media or advertising, and; 3) any involvement with any of Zing's copyrighted

material, including the "ZING AIR" logo. Zuru, LLC denies it ever precluded Zing from otherwise distributing Zing toy products. Zuru, LLC denies that it has caused injury or damage to Zing.

125.

Zuru, LLC denies charging Zing for the sale of the Molds and Zyclone Tooling. Zuru, LLC further denies that it has ever used the Molds and tooling. Zuru, LLC further denies that it has caused injury or damage to Zing.

126.

Zuru, LLC denies receiving any benefit it has retained. Zuru, LLC further denies that it has caused damage or injury to Zing.

COUNT XI

(Violation of Oregon Trade Secrets Act - ORS 646.461, *et. seq.*)

127.

Zuru, LLC realleges and incorporates Paragraphs 1 through 126 above, as though fully set forth herein.

128.

Zuru, LLC denies any business relationship with Zing, including but not limited to "a non-exclusive distribution agreement." Zuru, LLC lacks sufficient knowledge to admit or deny the remaining allegations and so denies the same.

129.

Zuru, LLC denies it misappropriated the "ZING AIR" original art work and toy packaging. Zuru, LLC denies it ever had a website. Zuru, LLC denies it ever entered a "non-exclusive distribution agreement" with Zing.

130.

Zuru, LLC denies it improperly used Zing's trade secrets. Zuru, LLC lacks sufficient information to admit the remaining allegations in this paragraph and so deny the same.

131.

Zuru, LLC denies that it has caused injury or damage to Zing.

132.

Zuru, LLC denies that it has ever used Zing's trade secrets in any manner. Zuru, LLC denies the remaining allegations in this paragraph.

133.

Zuru, LLC denies that it has ever used Zing's trade secrets in any manner. Zuru, LLC denies that it has caused Zing any injury or damage.

COUNT XII

(Breach of Contract)

134.

Zuru, LLC re-alleges and incorporates Paragraphs 1 through 133 above, as if fully set forth herein.

135.

Zuru, LLC denies it ever entered into a "Limited Distribution Agreement" with Zing. Zuru, LLC further denies the remaining allegations in this paragraph.

136.

Zuru, LLC denies that its conduct has caused injury or harm to Zing.

COUNT XIII

(Conversion)

137.

Zuru, LLC realleges and incorporates Paragraphs 1 through 136 above, as though fully set forth herein.

138.

Zuru, LLC denies it ever exerted any dominion and/or control, wrongfully or otherwise, over the Molds and Zyclone Tooling. Zuru, LLC denies that it ever denied Zing any right or entitlement to possess and/or use the Molds to manufacture Zing Toy products. Zing accordingly denies the remaining allegations in this paragraph.

139.

Zuru, LLC denies it ever exerted any dominion and/or control, wrongfully or otherwise, over the Molds and Zyclone Tooling. Zuru, LLC denies that it ever denied Zing any right or entitlement to possess and/or use the Molds to manufacture Zing Toy products. Zing accordingly denies the remaining allegations in this paragraph.

140.

Zuru, LLC denies it ever converted Molds or Zyclone Tooling. Zuru, LLC lacks knowledge and information sufficient to form a belief about the truth of the remaining allegations and so denies the same.

141.

Zuru, LLC denies it ever converted Molds or Zyclone Tooling. Zuru, LLC lacks knowledge and information sufficient to form a belief about the truth of the remaining allegations and so denies the same.

142.

Zuru, LLC denies it ever converted Molds or Zyclone Tooling. Zuru, LLC lacks knowledge and

information sufficient to form a belief about the truth of the remaining allegations and so denies the same.

143.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

As its first affirmative defense, Zuru LLC asserts that plaintiff has sued the wrong party, and consequently fails to state a claim for which relief can be granted.

144.

SECOND AFFIRMATIVE DEFENSE

(Plaintiff is Not the Real Party in Interest)

As its second affirmative defense, Zuru LLC asserts that plaintiff is not the real party in interest to the breach of contract claims. Any alleged "limited distribution agreement" was between Zing HK and Zuru, Inc.

145.

THIRD AFFIRMATIVE DEFENSE

(Estoppel)

As its third affirmative defense, Zuru, LLC asserts that plaintiff's claims are barred by the doctrine of estoppel.

146.

FOURTH AFFIRMATIVE DEFENSE

(Unclean Hands)

As its fourth affirmative defense, Zuru, LLC asserts that plaintiff's claims are barred by the doctrine of unclean hands.

147.

FIFTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

As its fifth affirmative defense, Zuru LLC asserts that plaintiff failed to mitigate its damages, if any.

148.

SIXTH AFFIRMATIVE DEFENSE

(Mark Not Reasonably Visible)

As its sixth affirmative defense, Zuru, LLC asserts that plaintiff's mark is not reasonably visible to the consumer.

149.

SEVENTH AFFIRMATIVE DEFENSE

(Mark Not Distinctive)

As its seventh affirmative defense, Zuru, LLC asserts that plaintiff's mark is not distinctive.

150.

EIGHT AFFIRMATIVE DEFENSE

(No Likelihood of Confusion)

As its eight affirmative defense, Zuru, LLC asserts that its use, if any, of plaintiff's mark is not likely to cause confusion among consumers as to the source of the parties' respective goods and services.

151.

NINTH AFFIRMATIVE DEFENSE

(Contributory Fault)

As its ninth affirmative defense, Zuru, LLC asserts that plaintiff's damages, if any, were caused or contributed to by plaintiff's own fault.

152.

TENTH AFFIRMATIVE DEFENSE

(Fault of Others)

As its tenth affirmative defense, Zuru, LLC asserts that plaintiff's damages, if any, were caused by the fault of other third parties.

153.

ELEVENTH AFFIRMATIVE DEFENSE

(Statute of Frauds)

As its eleventh affirmative defense, Zuru, LLC asserts that plaintiff's claims are barred by the statute of frauds.

////

////

////

////

////

///

////

////

////

////

154.

TWELTH AFFIRMATIVE DEFENSE

(Fraud)

As its twelfth affirmative defense, Zuru, LLC asserts that plaintiff's claims are barred by its own fraud.

WHEREFORE DEFENDANT ZURU, LLC PRAYS FOR RELIEF AS FOLLOWS:

- 1.) Judgment against Plaintiff on all counts;
- 2.) Its costs and disbursements incurred herein; and
- 3.) Any such relief that the Court deem just and equitable.

DATED this 25th day of October, 2010.

THE GRIFFIN LAW GROUP

s/ Philip S. Griffin

GRIFFIN LAW GROUP
Philip S. Griffin
OSB #87232
Tel. 503. 471.1306
Fax. 503.244.3264
phil@griffinlawgroup.com
Of attorneys for Zuru, LLC

CERTIFICATE OF SERVICE

I certify that on the 26th day of October, 2010, the foregoing **DEFENDANT, ZURU, LLC'S ANSWER AND AFFIRMATIVE DEFENSES** was filed electronically. Notice of this filing will be sent to all other counsel by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/ Philip S. Griffin

Philip S. Griffin
GRIFFIN LAW GROUP
OSB #87232
Tel. 503. 471.1306
Fax. 503.244.3264
phil@griffinlawgroup.com
Of attorneys for Zuru, LLC